

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JEANINE B., et al.,

Plaintiffs,

v.

Case No. 93-C-547

SCOTT McCALLUM, et al.,

Defendants.

NOTICE OF PROPOSED SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE:

**TO: All Children Who Are In Foster Care
In Milwaukee County Or Who
Come Into Foster Care In Milwaukee County
By November 15, 2002**

Legal Representatives of the Children Described Above

I. **BACKGROUND OF THE CASE.**

This notice involves a lawsuit known as *Jeanine B., et al. v. Scott McCallum, et al.*, which concerns the rights of children described above. **If you are one of these children, or if you are the legal representative of one or more of these children, then you should read this notice.**

The *Jeanine B.* lawsuit was filed in June 1993 in the United States District Court for the Eastern District of Wisconsin ("the Court"). In the lawsuit, the plaintiff children allege that the foster care system

in Milwaukee County failed to comply with its duties to these children under the United States Constitution and certain federal statutes. Supplemental Complaints were filed in 1999 and 2000, after the State of Wisconsin assumed direct responsibility for administering the child welfare system in Milwaukee County effective January 1, 1998.

The Court certified this lawsuit as a class action. This means that the lawsuit involves the rights of all members of the class. The children whose rights are involved in this case are described as follows:

Class (1): Children who are in foster care custody in Milwaukee County and who come into foster care custody in Milwaukee County; and

Class (2): Children who are not in foster care custody in Milwaukee County, but about whom the County Department of Human Services has received reports of abuse or neglect, and children who become the object of such reports.

By 1998, the Court had dismissed all of the claims by the subclass of children described in Class (2) above. These children have no remaining claims in the case and the proposed settlement agreement does not change this or affect Class (2) children at all.

The current defendants, Governor Scott McCallum and Secretary Phyllis Dubé, deny that the state-administered foster care system in Milwaukee County violates any rights of the Class (1) children.

The lawyers for the Class (1) children have negotiated a Settlement Agreement with the defendants. The parties in this case have asked the Court to approve the Settlement Agreement.

Class (1) children and their legal representatives have the right to request a copy of and to review the Settlement Agreement and to inform the Court, in writing, whether the Court should approve the Settlement Agreement and why.

II. NOTICE OF HEARING.

The Court has scheduled a hearing to consider the request of the lawyers for the parties to approve the Settlement Agreement. This hearing is scheduled as follows:

DATE: Friday, November 15, 2002
TIME: 1:00 p.m.
BEFORE: The Honorable Rudolph T. Randa
PLACE: United States District Court for the Eastern District of Wisconsin
517 East Wisconsin Avenue, Courtroom 320
Milwaukee, Wisconsin 53202

Before the hearing, Class (1) children and/or their legal representatives may submit written comments on the Settlement Agreement for the Court to consider. Instructions on how to submit written comments appear below in Section IV. Class (1) children and their legal representatives are welcome to attend the hearing.

The Court may in its discretion permit some or all Class (1) children and/or their legal representatives to speak during the hearing regarding the Settlement Agreement. Instructions on how to ask the Court for permission to speak at the hearing appear below in Section IV.

PLEASE NOTE: THIS CASE AND THIS HEARING DO NOT CONCERN ANY INDIVIDUAL CHILD'S CASE THAT IS PENDING IN THE MILWAUKEE COUNTY CHILDREN'S COURT. THIS CASE AND THIS HEARING CONCERN ISSUES INVOLVING OPERATION OF THE MILWAUKEE COUNTY FOSTER CARE SYSTEM AS A WHOLE.

III. HOW TO OBTAIN COPIES OF THE SETTLEMENT AGREEMENT OR MORE INFORMATION ABOUT THE CASE.

Class (1) children and their legal representatives may obtain a copy of the Settlement Agreement from the Department of Health and Family Service's web page. The addresses on the

Internet are <http://www.dhfs.state.wi.us/aboutDHFS/DCFS/dcfs.htm> and <http://www.dhfs.state.wi.us/aboutDHFS/DCFS/dcfserve.htm>. If a computer is not available, a copy of the Settlement Agreement may be obtained by contacting Linda Ashley of the Bureau of Milwaukee Child Welfare. Ms. Ashley's telephone number is **414-220-7063**.

Any Class (1) child or legal representative who has questions about the Settlement Agreement or would like more information about the lawsuit may contact Attorney Eric Thompson. Attorney Thompson represents the Class (1) children in this lawsuit and works for Children's Rights, Inc. of New York City. His toll-free telephone number is **1-888-283-2210**.

You may also review the materials that the parties have filed with the Court by going to the Office of the Clerk at the United States District Court for the Eastern District of Wisconsin in Milwaukee, which is in the United States Courthouse at 517 East Wisconsin Avenue, Milwaukee, Wisconsin. To review materials in the public record in this case, refer to Case No. 93-C-547.

IV. **HOW TO SUBMIT COMMENTS TO THE COURT OR TO REQUEST PERMISSION TO SPEAK AT THE HEARING.**

Any Class (1) child, or the child's legal representative, who wishes to submit written comments that support or object to the Settlement Agreement, must send or deliver a letter to the Court at the following address:

The Honorable Rudolph T. Randa
District Judge
United States District Court
Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, WI 53202

The letter must be **received** by no later than **Thursday, October 31, 2002**. The letter must be signed, and the name, address and telephone number of the author must be legibly printed.

Any Class (1) child, or the child's legal representative, who wishes to speak at the hearing must request permission of the Court. Please include this request in the letter. The Court will decide who can speak at the hearing. Please be assured that the Court will consider the letter whether or not permission is granted to speak, and whether or not the child or legal representative even attends the hearing.

V. SUMMARY OF THE SETTLEMENT AGREEMENT.

If the Court approves the Settlement Agreement, the state-administered foster care system in Milwaukee County will be required to meet or exceed certain performance measures that are phased in over a three-year period. This three-year period begins January 1, 2003. If the system meets all of the performance measures by the end of the third year (December 31, 2005), then the parties will ask the Court to terminate the Settlement Agreement.

The most important parts of the Settlement Agreement are summarized below:

(A) Permanence

By the end of the three-year period, at least 90% of all children who have been in care for at least 15 of the most recent 22 months must either be the subject of a petition to terminate their parental rights, making them legally available for adoption, or an exception to that requirement must be documented in the child's case file. At least 71% of children who are reunified with their parents or caretakers must be reunified within 12 months and no more than 20% or 25% (depending on whether Wisconsin obtains authorization from the federal government for subsidized guardianships) of children shall remain in foster care longer than 24 months.

(B) Safety

The rate of substantiated abuse or neglect of children while in out-of-home care must approximate the current federal standard for states by the end of the third year. By that time, 90% of all allegations of abuse or neglect of a child in care must be referred for investigation and assigned to an investigator within 6 business days. 90% of these investigations must be completed and a decision made within 60 days after the referral.

(C) Child Well-Being

By January 1, 2004, caseloads must average no more than 11 families per on-going caseworker on a site by site basis. Each site must comply with BMCW's requirement of monthly face-to-face visits with children at least 90% of the time or be subject to a monetary penalty. Shelter placements will be phased out and, by December 31, 2003, no foster child will be placed in a shelter. By December 31, 2003, BMCW must develop short-term special diagnostic/assessment centers for children over the age of 12. By the end of the third year, 90% of all children in foster care must have no more than two changes in placement since January 1, 1999.

(D) Monitoring

BMCW's program evaluation managers must conduct detailed evaluations of the system every 6 months and issue a public report on their findings. Each evaluation will include an examination of the specific performance measures of the Settlement Agreement and other performance indicators, such as making sure that children receive an initial medical exam within 5 business days of their initial placement, that children are being referred to appropriate health

care services and that foster parents are receiving appropriate health and education information about the children being placed with them.

(E) Enforcement

If the parties disagree about whether the defendants are complying with the Settlement Agreement, the parties must first try to negotiate. If negotiations do not succeed, then the dispute must be submitted to an arbitrator, who is a neutral person not associated with either side in the case. The decision of the arbitrator is binding. A party can ask the Court to review the arbitrator's decision but only if the decision is clearly wrong. A party can ask the Court to enforce the arbitrator's decision.

(F) Attorney Fees

The kinds of claims that are involved in this lawsuit entitle the prevailing party to reasonable attorney fees and costs. The parties have negotiated a compromise of the claim submitted by plaintiffs' attorneys. Under the Settlement Agreement, plaintiffs' attorneys, who include lawyers from the not-for-profit organizations Children's Rights, Inc., of New York City, New York, and the American Civil Liberties Union of Wisconsin Foundation, of Milwaukee, Wisconsin, and the law firms Gray, Plant, Mooty, Mooty & Bennett, P.A., and Dorsey & Whitney LLP, both of Minneapolis, Minnesota, would receive a total of Nine Hundred and Fifty Thousand Dollars (\$950,000.00) as compensation and to reimburse their expenses incurred during this 9 1/2-year-old lawsuit.

VI. ORDER

The Court has reviewed and now approves for distribution the contents of this Notice of Proposed Settlement Agreement.

Dated at Milwaukee, Wisconsin, this 26th day of September, 2002.

SO ORDERED:

/s/ Rudolph T. Randa
HONORABLE RUDOLPH T. RANDA
United States District Judge